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Nos. 01-1118 and 01-1119

Supreme Court U.S.
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In The
Supreme Court of the United States

JOSEPH SCHEIDLER, et al.,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., et al.,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

Brief Amicus Curiae Of Seamless Garment Network, Feminists For Life Of America, The Fund For Animals, Not Dead Yet, Sojourners, Witnesses For Reconciliation, Wendell Berry, Abe Bonowitz, Bernard Broussard, Carol Crossed, Will Davis Campbell, Ruth Enero, Nat Hentoff, Kathy Kelly, Rachel Macnair, Michele Pflaum, Mary S. Rider, Martin Sheen, Howard Zinn, Et Al., In Support Of Petitioners

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici[1] are voluntary associations and individuals committed to principles of nonviolent direct action on a wide range of social issues. The general interest of the amici in this case is that, if uncorrected by this Court, the unwarranted expansion of the federal racketeering law by the court of appeals will repress the function of popular protest in the American constitutional order. At the very center of American constitutionalism is the commitment to truths our founders acknowledged as self-evident: that all men and women are created equal, that they are endowed by their Creator with certain inalienable rights (including life, liberty, and the pursuit of happiness) and that governments instituted to secure these rights derive their just powers from the consent of the governed. Declaration of Independence, 1 Stat. 1 (1776); Declaration of Sentiments of the Seneca Falls Convention (1848).

As we suggest below, the government has from time to time and in various ways violated these foundational truths. In such times, the People have often been the moral compass, disagreeing with existing policies and calling the nation forward to a deeper understanding of the fundamental truths at the heart of the American experiment, such as the right to life and the right to liberty. "We, the People" ordained and established the Constitution for the United States, ratified it in popular conventions, amended it over time to provide for a more perfect Union. U.S. Const., Preamble. The law, in short, has not only been an instrument of establishing justice, but has also become a means of coerced injustice. At each

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[1] Pursuant to Rule 37.6 of the Rules of this Court, amici state that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than amicus curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Professor Blakey represented the Scheidler respondents before this Court in *NOW v. Scheidler*, 510 U.S. 249 (1994), but is not counsel to the petitioners at this stage in the litigation.

of the critical turning points in our nation's history, the People have protested the moral flaws of the law, whether enacted by the people's representatives or pronounced by the judiciary.

Popular resistance to law is not justified merely because a lot of people engage in it. Lynch mobs were the classic example of violent popular power that is repugnant to our Constitutional order. But nothing analogous to that sort of violence is attributable to any of the petitioners in this case. The Court should secure one of the noblest features of American democracy, the right of the People to engage in non-violent protest against governmental violence and against violations of fundamental liberties, including the inalienable right to life itself.

The willingness of an organization or individual to appear before this Court in this brief does not necessarily imply that the organization or person agrees with the substantive views of the petitioners about abortion. Some of the amici support the views of the petitioners; others oppose these views; still others have no official view on this matter. But all of the amici join this brief because the novel view of extortion expressed by the court of appeals exposes them to liability under RICO in a manner that is at odds both with the legal history of extortion and with the social history of public protest, including civil disobedience, in this country. The decision below should be reversed because it violates the core principle of the First Amendment: the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." *New York Times v. Sullivan*, 376 U.S. 264, 270 (1964).

This brief is submitted with the consent of the parties, whose consent letters have been filed with the Clerk of the Court. The particular interests of the amici curiae are stated in Appendix A.

SUMMARY OF ARGUMENT

The theory of extortion adopted by the court of appeals is novel. Never in the history of the common law was

extortion understood to comprehend a loss of business opportunity by the victim. Only most recently and never with the blessing of this Court has the crime of extortion been understood to apply to social protest in which the protesters do not obtain property from those against whom they were protesting. *See Northeast Women's Center v. McMonagle*, 868 F.2d 1342 (3d Cir.) *cert. denied*, 493 U.S. 901 (1989). The interpretation of RICO adopted by the court of appeals is, moreover, contradicted by the history surrounding the adoption of this statute, in which Congress expressly and clearly indicated that it did not mean RICO to be used against social activists. Against this historical perspective, RICO should not be read to grant boundless authority to federal courts to redefine the predicate offense of extortion in a manner that flies in the face of the clear understanding of this crime in state legislation, as construed definitively by state courts.

Second, if the novel view of extortion advanced by the court of appeals were the law of the land at any earlier period of our history, it would have been a major impediment to all movements of social protest that have enhanced the protection of life, liberty, and equality in this nation. In particular the movements to abolish slavery, to end racial discrimination, to include women within the franchise and the full obligations of citizenship, and to end irrational gender discrimination would have been set back severely. This reading of our history cautions against the expansion of civil RICO to nonviolent protesters who occasionally employ the tactic of civil disobedience to manifest their protest to the current status of the law.

Third, adequate remedies exist in state law to punish those who employ civil disobedience as a means of challenging the current state of the law. For example, a person who trespasses upon private property is subject to the laws of the several states concerning trespass. In 1994 Congress acted to protect the owners of abortion clinics through a federal statute known as the Federal Access to Clinic Entrance Act [FACE], 18 U.S.C. §248. This statute was enacted because Attorney General Reno and the Attorneys General of several states took the view that no

federal law – including the Hobbs Act and RICO – afforded any protection to abortion clinics under the circumstances of protests in front of clinics at the time. The court of appeals has stretched RICO far beyond the intent of Congress and has needlessly intervened in the traditional domain of the states to maintain public peace in the context of expression of viewpoints on controversial matters of public concern.

ARGUMENT

I. The novel view that the crime of extortion may occur without any "obtaining of property" is unprecedented and unsupported in legal history from the common law to the adoption of RICO.

A. The confusion of loss of business opportunity with "obtaining of property." The court of appeals sustained the imposition of massive civil damages upon the three named individual petitioners under the federal racketeering statute. The legal lynchpin of this use of RICO is that the petitioners conducted or participated in the conduct of the affairs of the Pro-Life Action Network [PLAN] through a pattern of "predicate acts" of extortion in violation of the Hobbs Act, 18 U.S.C. §1951, and various state extortion statutes, the history of which we discuss below. In reaching this result, the court of appeals sustained the district court "in all respects," Pet. App. 31a.

The district court allowed the jury to hear the following evidence as probative of "extortion." "Obtaining" property was proved on respondents' showing a temporary delay in keeping an appointment at an abortion clinic. Tr. 5005. The clinics' lost "property" was the money spent on "extraordinary security costs." Tr. 572. Respondents did not allege or seek to prove any loss of business *per se*. Demonstrating, being in the way, delaying access, without more, was equated with violence to discourage patients, Tr. 712, from keeping their appointments and force clinics to pay additional security costs. Tr. 607.

The court of appeals ruled that any errors that may have occurred in this handling of the evidence were "harmless," Pet. App. 30a, because the court of appeals adopted the respondents' theory that they did not need to demonstrate that the petitioners sought specifically to "obtain property," but that it was enough to demonstrate that the petitioners interfered with the personal rights of the owners of abortion clinics. Tr. 4987; 550.

As for acts of actual physical violence, the court of appeals sustained the decision of the district court allowing the plaintiffs to introduce before the jury irrelevant evidence about the conduct of persons never identified in the trial. Whoever these parties were, their acts against various abortion providers, Tr. 685, 687, 723, 1148, 1486, 2147-50, over the fourteen years from 1984 to trial were most emphatically not the acts of any of the named petitioners, all of whom are committed exclusively to nonviolent direct action in the tradition of Mohandas Gandhi and Dr. Martin Luther King, Jr.

For example, the lead petitioner has explained that in his protest activity he uses "strict guidelines: no touching or barring the entrance, no harassment, no name-calling, no 'planting a guilt trip.'" Interview with Joseph Scheidler, *Ms.* [Magazine], Plaintiff's Exhibit No. 628, at 7. And he has stated unequivocally: "I am opposed to physical actions against a clinic that would cause any physical harm or material damage. I demand non-violent direct action. I am for trespassing to save life, and support a peaceful presence and a sit-in in order to talk to the women having abortions." *Id.* at 12. *See also* Joseph Scheidler, "Violence: Why It Doesn't Work," in *Closed – 99 Ways to Stop Abortion* chapter 81 (1993), Defendants' Exhibit No. 2. Similarly, Operation Rescue demanded pledges of non-violence from those who took place in their activities, which were wholly separate from any activities organized by PLAN, Plaintiffs' Exhibit 221.

In this tradition of nonviolent direct action to protest conditions of perceived injustice, petitioners and many of the amici have engaged sometimes in illegal acts such as

trespass that are fully punishable under state law or under federal statutes such as the Federal Access to Clinic Entrance Act [FACE], 18 U.S.C. §248. But they have never advocated, let alone taken part in, any crime of violence against any other human being. They pose no threat to human life, and they engage in protests on a wide variety of social issues with one common thread: respect for human life in all of its manifestations.

Without a scrap of evidence that any of the three named petitioners ever committed any act of violence at any time, respondents smeared the petitioners not with a broad stroke, but with a tar brush. Since there was no proof that any petitioner was responsible for the murders, arsons, and kidnappings that the respondents introduced into evidence, the district court excluded such evidence from the trial for the purpose of blaming defendants, but gave the respondents free rein to refer to such incidents as "background information" for the purpose of evaluating whether the petitioners were guilty of "extortion." Tr. 685, 723, 1486, 5181. This is not harmless error. It is a grave mistake that turns civil courts into battlegrounds of incivility and that transforms RICO into a bludgeon with which people can pummel their ideological adversaries.

Anyone familiar with the problem of unringing a bell knows that presentation of evidence of this kind to a jury cannot be cured with a teaspoon of medicine at the end of the trial asking the jury to ignore what it was allowed to hear as part of the "context" within which they should evaluate the words and speeches of the petitioners, to determine whether these words constituted "threats" of "violence." Tr. 5187. For example, when a clinic operator was not present, Mr. Scheidler went to the clinic to meet with her, he left his card and wrote on the back of it two words, "Choose Life." Petitioners were not allowed to testify that the phrase was from the Bible[2] and was used

[2] In a major address on the peace process in the Middle East, President Bush used the same, unadorned biblical citation: "Choose

(Continued on following page)

to encourage respect for all human life. Tr. 1489. Neither were the petitioners allowed to present counter-contextual evidence in rebuttal. This is the record upon which the court of appeals fashioned its novel claim that proof of extortion under the Hobbs Act does not require a showing of "obtaining property" in any sense remotely like what the common law of extortion has traditionally meant. We turn now to a discussion of the relevant legal history surrounding extortion.

B. **The novelty of divorcing "obtaining of property" from the crime of extortion.** The second question presented asks "Whether the Hobbs Act, which makes it a crime to obstruct, delay, or affect interstate commerce 'by robbery or extortion' – and which defines 'extortion' as 'the *obtaining* of *property* from another, with [the owner's] consent,' where such consent is 'induced by the wrongful use of actual or threatened force, violence, or fear' (18 U.S.C. §1951(b)(2) (emphasis added))" may be applied to the petitioners on the record in this case or to the amici, who have often engaged in social protest on a variety of matters of public concern, but who have never done so to *obtain property* from those against whom they were protesting.

The view of extortion advanced by the court of appeals, Pet. App. 28a-29a, represents a serious departure from this Court's explicit teaching in *United States v. Enmons*, 410 U.S. 396, 400 (1973) (reversing Hobbs Act convictions of labor union officials and members who had engaged in acts of physical violence and destruction of

life." Remarks on the Middle East, 38 Weekly Comp. Pres. Doc. 1091 (June 24, 2002). The author of the words is Moses; the context of his well-known sermon to the people of Israel is as follows: "I call heaven and earth to witness against you today that I have set before you life and death, blessings and curses. Choose life so that you and your descendants may live, loving the LORD your God, obeying him, and holding fast to him; for that means life to you and length of days, so that you may live in the land that the LORD swore to give to your ancestors, to Abraham, to Isaac, and to Jacob." (Deuteronomy 30:18-20).

property during a campaign to induce an employer to agree to a union contract, because they had acted to further "legitimate union objectives, such as higher wages in return for genuine services"). Second, it is not a view that commands broad respect in other circuits, *see, e.g.*, *United States v. Panaro*, 266 F.3d 939, 948 (9th Cir. 2001), and *United States v. Nedley*, 255 F.2d 350, 352-53, 355, 357 (3d Cir. 1958). Third, the view of extortion announced by the court of appeals has no basis whatever in the long history of this crime. As we show next, the court did not discover its view of extortion in the prior history of this crime, but literally made it up out of whole cloth.

C. **The History of the Crime of Extortion.** The notion that a loss of business opportunity constitutes extortion is completely groundless. Chaos would ensue if this notion were taken seriously in commercial litigation. Every dispute involving a hard bargain in which there is a winner and a loser could descend into years of RICO battles simply by calling the outcome of the transaction "extortion."

Amici cannot stress with sufficient emphasis their sober judgment arising from decades of their involvement in social activism in this country that severe damage would be done to civil liberties if RICO is added to the arsenal of weapons that may be employed against social activists who protest about unpopular causes. The decision of the court of appeals represents a radical and tragic departure from a long series of cases (none of which were even discussed by the courts below) in which this Court has held repeatedly that picketing is legal – within certain restraints -- even though it manifestly has the purpose and effect of inflicting economic injury upon the target of the picket. *See, e.g., Organization for a Better Austin v. Keefe*, 402 U.S. 415, 418-20 (1971) (claim that expression was intended to have coercive impact does not remove it from reach of First Amendment). This tradition is grounded in the recognition that peaceful picketing and leafleting are expressive conduct "of the highest order," *United States v. Grace*, 461 U.S. 171, 176-78 (1984) (picketing permitted in perimeter of Supreme Court). As this Court taught,

"Speech does not lose its protected character simply because it may embarrass others or coerce them into action." *NAACP v. Claiborne Hardware*, 458 U.S. 886, 910 (1982); *see also Cox v. Louisiana*, 379 U.S. 536, 551-52 (1965) (since one of the functions of free speech is "to invite dispute," it may "best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger"). There are, in short, constitutional restraints even upon the idea of coercion. In addition, there are important historical reasons for differentiating coercion from extortion.

The place to begin the inquiry on extortion is with the common law, for this Court has repeatedly taught that a statutory term is generally presumed to have its common law meaning, *See, e.g., Taylor v. United States*, 495 U.S. 575, 592 (1990) (burglary); *United States v. Turley*, 352 U.S. 407 (1957) (stealing); *Perrin v. United States*, 444 U.S. 37, 45 (1979) (bribery); *Bell v. United States*, 462 U.S. 356, 362 (1983) (robbery). In *United States v. Nardello*, 393 U.S. 286, 289-96 (1969), the Court expressly applied this teaching to the definition of extortion. In *Morrisette v. United States*, 342 U.S. 246 (1952), the Court wrote: "where Congress borrows terms of art . . . it presumably knows and adopts the cluster of ideas that were attached to each borrowed word." *Id.* at 263. This "cluster of ideas" has been explored in great detail by careful scholars. *See, e.g.*, G. Robert Blakey and Kevin P. Roddy, "Reflections on Reves v. Ernst & Young: Its Meaning and Impact on Substantive, Accessory, Aiding, Abetting and Conspiracy Liability Under RICO," 33 Am. Crim. L. Rev. 1345, 1657-76 (1996); James Lindgren, "The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act," 35 UCLA L. Rev. 815 (1988); Brian Murray, "Protestors, Extortion, and Coercion: Preventing RICO from Chilling First Amendment Freedoms," 75 Notre Dame L. Rev. 691, 702-22 (1999).

In all of the major treatises on the common law, there is unanimity in the definition of extortion as a *property* offense. *See* 4 William Blackstone, *Commentaries on the Laws of England* 141 (1765); 3 Edward Coke, *First*

Institute 584 (J. Thomas ed. 1826); William Hawkins, *A Treatise of the Pleas of the Crown* 316 (6th ed. 1788). The court of appeals ignored the explicit teaching of this Court in *Nardello*, *supra*, and fashioned its own understanding of extortion that is manifestly at odds with the common law understanding of the crime, which required a *taking of property by the offender,* not a mere *deprivation or loss of business opportunity by the victim*. This point is clear in both the plain language of the Hobbs Act, and in the New York Field Code upon which it was based. *See Evans v. United States*, 504 U.S. 255, 261-63 (1992); *Carter v. United States*, 530 U.S. 255, 266 (2000).

The Model Penal Code[3] maintains the distinction between the common law offense of extortion and the subsequent statutory crime of coercion, which was unknown to the common law; *see, e.g., State v. Ullman*, 5 Minn. 1, 2 (1861). Section 223.4 of the Model Penal Code "deals with situations where threat ... is the method employed *to deprive the victim of his property.*" American Law Institute, Model Penal Code §223.4 at 201 (1980) (emphasis added). A distinct section "prohibits specified categories of threat made with the purpose of unlawfully restricting another's freedom of action to his detriment." *Id.*, §212.5 at 264. Many states follow the Model Penal Code by categorizing extortion and coercion as distinct statutory offenses; *see* Blakey & Roddy, "Reflections on Reves," 33 Am. Crim. L. Rev. 1345, at 1660 n. 25. A second group of states recognizes only the crime of extortion, not coercion. *Id.*, note 26. However the states handle the distinction between extortion and coercion, it is not a trivial distinction: "it is of the essence of extortion – not

[3] "The Model Penal Code has become ... the principal text in criminal law teaching, the point of departure for criminal law scholarship, and the greatest single influence on the many new state codes.... The success of the Model Penal Code has been shining. Largely under its influence, well over half the states have adopted revised penal codes." Sandford Kadish, "The Model Penal Code's Historical Antecedents," 19 Rutgers L. J. 521, 538 (1988).

only in New York, but more importantly, in the law generally – that one compel another to surrender property." *United States v. Private Sanitation Industry Ass'n*, 793 F. Supp. 1114, 1132 (1992) (distinguishing extortion and coercion); *see also Center Cadillac v. Bank Leumi Trust Co.*, 808 F. Supp. 213, 231-32 (S.D.N.Y. 1992) (coercion not among laws providing a basis for RICO liability).

Under the constant teaching of this Court in the cases cited above – *Bell, Nardello, Perrin, Taylor* and *Turley* – the court of appeals was required to preserve the distinction between coercion and extortion. Instead, it radically rewrote the definition of extortion and held the petitioners liable for extortion when the record supports only a finding that owners of some abortion clinics lost an opportunity to do business when the petitioners dissuaded potential clients from having an abortion.

If the common law understanding of extortion is to be altered, this Court has taught that innovation of this sort is for Congress to undertake, not the federal courts. *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 249 (1989); and *see* cases cited in Blakey & Roddy, "Reflections on Reves," *supra*, 33 Am. Crim. L. Rev. 1345, at 1661, n. 31.

Distinctions matter in criminal law. The businessman who yields to the extortion of a racketeer, the parent who pays ransom to the kidnapper, may be unwise or may even be thought immoral. But to view them as involved in the commission of the crime of extortion as an aider or abettor confounds the policy embodied in the prohibition. This record is replete with mistakes that obliterate the line between criminal and innocent conduct. For example, under the respondents' theory of the case, PLAN is a "criminal enterprise," described in the pleadings as "an association of individuals and groups with the common purpose of using racketeering activity to drive all clinics that provide abortion services out of business" (Third Amended Complaint, ¶ 83, S. App. 350). Included with the scope of the respondents' definition of "persons associated with PLAN" were organizers or featured speakers at

PLAN conventions. One of PLAN's featured speakers was Dr. William Allen, Chairman of the United States Civil Rights Commission. Tr. 2858. According to the respondents, mere attendance at one of the annual meetings of PLAN is a "predicate racketeering act." Third Amended Complaint, ¶ 87B, S. App. 351. At trial, respondents cast an even wider dragnet that snared *all abortion protesters* as "persons associated with PLAN." Thus the petitioners were held responsible for activities of other persons, known or unknown, authorized or not, even where the petitioners opposed such activities. Tr. 4781.

Mistakes of this sort at the trial were compounded by the court of appeals, which committed reversible error when it blurred the distinction between extortion and coercion in defining a violation of the Hobbs Act. Extortion should be left in its common law mold. If not, then the change should be made by the legislature.

II. If the novel theory of extortion adopted by the court of appeals were the law of the land at any earlier period of our history, it would have been a major impediment to all movements of social protest that have enhanced the protection of life, liberty, and equality in this nation.

A. **Conflict over Fundamental Freedoms**. Any serious student of American history is aware that the struggle to secure the freedoms we deem to be natural rights, not gifts of the government,[4] has been deeply conflictual. *See, e.g.,* Howard Zinn, *A People's History of the United States* (1999). This theme of conflict over basic

[4] "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness." Declaration of Independence, 1 Stat. 1 (1776); *see also* Virginia Declaration of Rights (June 1776).

values recurs in every generation from the founding moment to the present, from the Boston Tea Party through antiwar protests (notably during the Mexican-American War, the Civil War, World War I, World War II, and the Vietnam War, and in response to the ongoing presence of weapons of mass destruction), to the most recent demonstrations against the New Economic Forum and the global order that it represents. Thus the controversy over abortion is by no means the first volatile issue in the nation.

America is a nation with both a strong respect for the civilizing force of law and a healthy regard for the moral limits on law itself acknowledged in the tradition of civil disobedience, including episodes of confrontation with authority, that can be found in virtually every period of American history. *See, e.g.*, David Weber, ed., *Civil Disobedience in America: A Documentary History* 185-88 (1978); Carl Cohen, *Civil Disobedience: Conscience, Tactics, and the Law* (1971); and Edward Madden, *Civil Disobedience and Moral Law in Nineteenth-Century American Philosophy* (1968). Social protest has been expressed in nearly every decade of American history on a wide variety of subjects. We focus the discussion on two aspects of our constitutional history: racial equality and gender equality.

B. **The Effect of an Expansive Reading of Extortion on the Elimination of Slavery and Racial Discrimination.** If the view of the court of appeals described above had been the law of the land during the period of American slavery and Jim Crow, the overcoming of those twin evils would have been postponed for much longer than the time actually needed to do so.

As Justice Marshall reminded us during the Bicentennial of our Constitution, not everything about this country's past – including slavery and Jim Crow segregation – is cause for rejoicing. Thurgood Marshall, "Reflections on the Bicentennial of the United States Constitution," 26 Valparaiso U. L. Rev. 21 (1991).

In recent times we frequently compared ourselves favorably to totalitarian regimes of the Left and the Right

that swallowed up their opposition, sending them to the death camps and the Gulags for extermination. We take some pride in the way we have respected the strong voice of protest within our legal and political culture. Perhaps we have taken too much pride in our treatment of dissidents in view of the harsh penalties that were frequently applied to them. Whatever the right blend of pride and humility about our past, it is undeniable that our dissidents have at many critical turning points of American history helped to shape our destiny. But it has been a lot easier to recognize the value of social protest decades afterwards, when the position the protesters espoused was more broadly received by the people and incorporated into our laws.

Nearly everyone in America would now regard the eradication of the slavery system as the just and rightful repudiation of a brutal and inhuman labor system. Some might claim that slavery might have been abolished earlier and with less bloodshed on the battlefields of the Civil War if the abolitionists had been more "accommodating" to their adversaries, but this revisionist view overlooks the rigid mindset of the slaveholders who would brook no compromise on the matter of slavery as an "inalienable property right" bound up in their minds with an intractable position on state sovereignty. *See, e.g.*, Draft of the South Carolina Exposition (1828), in 6 *The Works of John C. Calhoun* 35-45 (1855); Fort Hill Address (1831), *id.* at 60-61; South Carolina Ordinance of Nullification (1832), 1 S.C. Statutes at Large 329 (1832); Const. of the Confederate States of America, Preamble.

Whatever the possible outcome of alternative hypothetical scenarios, the abolitionists pressed groundbreaking ideas. The most famous of the abolitionists, William Lloyd Garrison, was uncompromising in his campaign for immediate and complete abolition of slavery. In the first issue of *The Liberator* (Jan. 1, 1831) Garrison publicly renounced his previous position of gradual abolition and publicly asked "pardon of my God, of my country, and of my brethren, the poor slaves, for having uttered a [gradualist] sentiment so full of timidity, injustice and

absurdity." And he wrote: "urge me not to use moderation in a cause like the present! I am in earnest. I will not equivocate – I will not excuse – I will not retreat a single inch – AND I WILL BE HEARD" (emphasis in original), as cited in Louis Ruchames, ed., *The Abolitionists: A Collection of Their Writings* 31 (1963).

Garrison served as President of the American Anti-Slavery Society from 1843 to 1865. On July 4, 1854, he told a mass meeting of over 10,000 abolitionists in Framingham, Massachusetts: "We have degenerated in our reverence for the higher law of God." *See* Philip S. Paludan, *A Covenant with Death: The Constitution, Law and Equality* 2-3 (1975); John T. Noonan, Jr. and Edward McGlynn Gaffney, Jr., *Religious Freedom* 263-64 (2001). Garrison then burned a copy of the Fugitive Slave Act of 1850. Echoing the covenant renewal ceremonies in ancient Israel, Garrison stated: "And let the people say Amen" (*see, e.g.*, Deut. 27). The people did. Garrison then set fire to a copy of the order of a federal court in Boston that Anthony Burns – a black Baptist preacher who had escaped from his master in Richmond – be returned to his "legal owner." Again Garrison cited Moses: "And let the people say Amen." They did. Garrison then held up a copy of the Constitution, which he denounced as "the parent of all other atrocities." Citing the prophet Isaiah (Is. 28:15), he called the Constitution with its compromise on slavery "a covenant with death, a compact with hell." As he burned the Constitution, he shouted out: "So perish all compromises with tyranny! And let all the people say Amen." Again the large crowd roared out their assent in the single biblical word "Amen."

Under modern precedents, activity of that sort would probably be deemed protected. *See Texas v. Johnson*, 491 U.S. 397 (1989) (burning of American flag protected); *but see United States v. O'Brien*, 391 U.S. 367 (1968) (burning of draft card not protected). Whether under modern precedents the conduct of the abolitionists would be regarded as protected or unprotected expression, the relevance of these events to this case is clear. No one – not even Garrison's most critical opponents – imagined that

protest activity of this sort fell within the law of extortion, even though the net effect of such protest was to reduce the economic value of the slaveowners' "property" claim to "chattels personal." *See, e.g.,* Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (2d ed. 1974). The abolitionists radically challenged the very idea of owning a human being, and thus never "obtained" the property of the slaveholders. For this reason alone, the abolitionists were no more guilty of extortion for their protest against slavery than the petitioners are for their protest against abortion.

Less famous abolitionists may have been more effective in moving the hearts of their countrymen, but Garrison and the abolitionists were ultimately heard. As Garrison accurately predicted in the opening issue of *The Liberator*, "POSTERITY WILL BEAR TESTIMONY THAT I WAS RIGHT" (emphasis in original), as cited in Ruchames, ed., *The Abolitionists, supra* at 31. Although not all of the acts of the abolitionists would gain support even today, the basic thrust of their movement has now clearly prevailed in American law.

Women played a leading role in the abolitionist movement. Susan B. Anthony is now featured on the most valuable of our coins and is rightly remembered as the principal advocate for the enfranchisement of women, discussed below. She was also an agent of the American Anti-Slavery Society. In this capacity she urged an audience before the Civil War to "overthrow this government, commit its blood-stained Constitution to the flames, blot out every vestige of that guilty bargain of the father." As cited in Alma Luz, "Susan Brownell Anthony," in 1 *Notable American Women, 1607-1950: A Biographical Dictionary* 53 (Edward James ed. 1971). Lucretia Mott and the Grimké sisters were other notable feminists who were uncompromising on the abolition of slavery. *See, e.g.*, the letter of Angelina E. Grimké to Catherine E. Beecher, June 12, 1837 (fundamental principle of abolitionists is that "every slave-holder is a man-stealer") and June 17, 1837 ("all laws which sustain the system of slavery are unjust and oppressive – contrary to the fundamental principles of

morality, and therefore, null and void") as cited in Hugh Hawkins, ed., *The Abolitionists: Immediatism and the Question of Means* 41-50 (1964)

Women such as Lucretia Mott and Sojourner Truth played a powerful role in the operation of the "Underground Railroad" assisted slaves to flee from their masters, *see, e.g.,* Edward McGlynn Gaffney, "Politics Without Brackets on Religious Convictions," 64 Tulane L. Rev. 1143, 1160 (1990). This conduct was a direct challenge to the Fugitive Slave Act and to the jurisprudence that arose under it. *See, e.g., Sim's Case*, 61 Mass. (7 Cushing) 285 (1851); *see* Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (1975). Sometimes abolitionists engaged in dramatic "rescues" of slaves from the very courtrooms where their extradition hearings under the Fugitive Slave Act were being held, *see* Aviam Soifer, "Status, Contract, and Promises Unkept," 96 Yale L. J. 1916, 1919 (1987), and Stephen Campbell, *The Slave Catchers* 149 (1968). The abolitionists suffered violence for their views both from private parties and from the government. But no prosecutor in the nineteenth century ever thought to charge one of them with extortion, because none of the abolitionists ever obtained the dubious "property" that the Constitution and several federal and state statutes then deemed legal. *See, e.g., Dred Scott v. Sandford*, 60 U.S. 393 (1856) (ruling that an African slave was not a citizen with "social, civil, or political rights," but was "property to be used in subserviency to the interest, the convenience, or the will of his owner").

After the Civil War the Nation experienced a powerful movement to rebuild or reconstruct our constitutional order, ridding it of the racial injustice that had marred it from the outset. For a variety of reasons, mainly ignoble, this movement was aborted as part of the Compromise of 1877. *See, e.g.*, Eric Foner, *Reconstruction, America's Unfinished Revolution 1863-1877* (1988); Edward McGlynn Gaffney, Jr., "History and Legal Interpretation: The Early Distortion of the Fourteenth Amendment by the Gilded Age Court," 25 Cath. U. L. Rev. 207 (1976). Over a century after these events, however, we are now committed more

than ever to the enforcement of the Civil War Amendments that would have been inconceivable without the firm resolve of the Radical Republicans and their moral progenitors, the abolitionists. *See, e.g.*, Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* (1998).

The Jim Crow system was as iniquitous at its core as it was violent in the pattern of enforcement by the government at the state and local levels. *See, e.g.*, C. Vann Woodward, *The Strange Career of Jim Crow* (3d ed. 1974). In the face of such systemic violence imbedded in the law, the Civil Rights Movement was remarkable precisely for the commitment of its leaders, principally Dr. Martin Luther King, Jr., to Gandhian nonviolence. But as Dr. King made clear in his famous Letter from Birmingham Jail, nonviolence did not mean obeying unjust laws. On the contrary, King and his followers in the Southern Christian Leadership Conference frequently challenged the brutality of the existing legal order. *See, e.g.*, Taylor Branch, *Parting the Waters* (1988) (use of tactics of civil disobedience similar to those used by the petitioners in this case).

Amici note that – as in the period of abolitionism – the violence surrounding civil disobedience in the era of the Civil Rights Movement was committed primarily not by the protesters, but against them by their adversaries or by the police. Bull Connor undoubtedly thought he was preserving the peace against lawless agitators in Birmingham, but most of America saw the violence in the bared teeth of his dogs.

Memorable uses of civil disobedience in the era of the modern Civil Rights Movement included the efforts of the freedom riders and of the people who "sat in" places of public accommodation that were segregated on the basis of race. Were the freedom riders federal racketeers? President Kennedy certainly did not think so when he ordered the Justice Department to protect them, even if they caused Greyhound to lose some business because of their activities. Or were the sit-in demonstrators federal racketeers? After all, they caused Woolworth's and other

restaurants that observed the Jim Crow laws to miss a lot of opportunities to sell hamburgers and fries. Or were Rosa Parks and those who joined her in the famous Montgomery bus boycott extortionists? *See* Martin Luther King, Jr., *Stride Toward Freedom: The Montgomery Story* (1958). They, too, caused a diminution in the coffers of the municipal bus company that followed the Jim Crow law.

The line between Martin Luther King, Jr., and violent criminals, between freedom riders and Mafiosi, should not be difficult to discern. The loose definition of extortion adopted by the court of appeals has blurred that line and has imperiled social activists of a wide variety of sorts in this country.

In some cases this Court overturned convictions of the sit-in demonstrators for breach of the peace or for trespass under state law, perhaps for the reason that the Court could no longer countenance the underlying state legislation requiring Jim Crow segregation, *see, e.g., Brown v. Louisiana*, 383 U.S. 131 (1966).[5] In other instances the Court declined to reverse criminal convictions of protestors under state law, pointing to other dimensions of the facts, such as the integrity of the state courthouse or a State jailhouse. *See, e.g., Cox v. Louisiana*, 379 U.S. 559 (1965); *Adderley v. Florida*, 385 U.S. 39 (1966). No matter which way these cases turned, the inescapable fact is that civil rights activists engaged in acts of civil disobedience that would have been seriously impeded if the novel view of extortion adopted by the court of appeals had been the law of the land at that time.

The nation is now better off because of the movements to abolish slavery and to end Jim Crow law. Both of these

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[5] In a series of "sit-in" cases brought before the enactment of Title II of the Civil Rights Act of 1964, the Court declined to hold expressly that the Jim Crow laws were themselves unconstitutional, but found an alternative ground on which to reverse the State law conviction. *See, e.g., Bouie v. Columbia*, 378 U.S. 347 (1964); *Bell v. Maryland*, 378 U.S. 226 (1964).

movements faced steep opposition from those who wished to maintain the status quo. The opponents of these movements could easily have crushed the protesters if the theory of extortion adopted by the court of appeals had been available to them during these conflicted periods of American history.

The district court acknowledged the relevance of this period of history to this case, which he agreed was "analogous to sit-ins at lunch counters and Rosa Parks' civil disobedience." Pet. App. 73a, *see also* Tr. 4339-40. But Judge Coar curiously concluded that the analogy with the sit-ins and the refusal to move to the back of the bus "works in [respondents'] favor" because those protesters were "arrested, jailed, and otherwise punished." Pet. App. 73a. No one would seriously maintain that Martin Luther King, Jr., or his colleagues in the SCLC, were the sort of "racketeer" that Congress had in mind when it enacted RICO. Judge Coar ignored the major disparity between the sentence for trespassing under state law (a fine and perhaps a week in jail) and for extortion under the Hobbs Act (up to twenty years in prison).

Although the Court has declined to address the third question explicitly addressing *Claiborne Hardware*, the First Amendment overtones of this case are preserved in the second question and are worthy of the Court's attention. We discuss them briefly in Part III below.

C. **The Effect of an Expansive Reading of Extortion on the Elimination of Gender Discrimination.** If the view of the court of appeals had been the law of the land during the period of feminist insistence upon full participation in the rights and obligations of citizenship, equal justice under law for women and men would have taken much longer than the two centuries it took to achieve.

Many scholars have noted strong parallels between the slavery system and the abusive treatment of women as "chattels personal" subject to the law of coverture imbedded in the common law, *see, e.g.*, 1 William Blackstone, *Commentaries on the Laws of England* 430-33 (1765), and

enacted into law in this country by all-male legislatures and enforced by all-male courts. *See, e.g.*, James Kent, *Commentaries on American Law* (1826). Women wanted to participate in the franchise and in all of the obligations of citizenship from the very outset of the republic. They were excluded from doing so on the basis of the theory of virtual representation, the very theory that the revolutionaries used to reject the imperial rule of Great Britain over the American colonies. *See, e.g.*, Linda K. Kerner, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* 3-33 (1998).

As with the struggle to abolish slavery and then to eradicate the legal structure of apartheid, the effort to change the inequality between men and women under the law of this land was a prolonged and intense controversy. The feminists of the nineteenth century may not be contained within rosy-tinted portraits.

Eight decades after the adoption of the Nineteenth Amendment we now take for granted that women should be able to vote. But advocacy of this view was never easy. For example, Susan B. Anthony challenged the legitimacy of the all-male franchise by voting in Rochester in 1872 before a constitutional amendment expressly allowed it. She was convicted of voting fraud after a member of this Court, Justice Ward Hunt, disallowed the introduction of exculpatory evidence and directed the jury to enter a verdict of guilt without any opportunity to reflect upon the evidence. *United States v. Anthony*, 24 F. Cas. 829 (C.C.N.D.N.Y. 1873). Such judicial misconduct is reminiscent of the egregious behavior of Justice Chase presiding over trials under the infamous Sedition Act of 1798. *See* William H. Rehnquist, *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson* (1992).

The transcript of Anthony's bold statement before her sentencing makes clear that she was prepared to risk not only violating the law as it then stood, but also to risk being found in contempt of court. Anthony continued to speak powerfully about the injustice of her conviction,

even though Justice Hunt demanded that Anthony sit down and be silent, warning her seven times to the effect that "The Court can not allow the prisoner to go on." After she finally sat down, the Court required her to stand up to hear her sentence, and she then told the Court: "May it please your honor, I shall never pay a dollar of your unjust penalty. . . . I shall earnestly and persistently continue to urge all women to the practical recognition of the old revolutionary maxim, that 'Resistance to tyranny is obedience to God.'" David Weber, ed., *Civil Disobedience in America: A Documentary History* 185-88 (1978).

Anthony's views were ultimately vindicated by the enactment of the Thirteenth Amendment abolishing slavery and the Nineteenth Amendment enfranchising women. But the Thirteenth Amendment was ratified in 1865 only after the Civil War, and the Nineteenth Amendment was ratified in 1920 only after several further bold acts of public protest unmasking the "hypocrisy" of President Woodrow Wilson's commitment to wage war for democracy for males in Europe, but not to proceed peacefully within our constitutional processes to secure the franchise for females in America.

Like the abolitionists, the suffragists suffered violence for advocating their views. Dr. Alice Paul – founder of the Congressional Union for Woman Suffrage and the National Woman's Party, and author of the original Equal Rights Amendment – was arrested three times for her acts of nonviolent protest against the exclusion of women from the franchise. Paul waged a hunger strike in prison, was hospitalized, force-fed and treated as insane.

In 1913, Dr. Paul organized a famous parade in the nation's capital calling for the adoption of a constitutional amendment authorizing women's franchise. Women dressed in white were led by New York attorney Inez Milholand Boissevain, who was dressed like Joan of Arc on a white horse. At the end of the parade men pulled women off their horses, as police stood by smirking. A hundred people were hospitalized, but not a single man was arrested.

As with the abolitionists, the relevance of the suffragists to this case is simply that no one in the nineteenth or twentieth century imagined that the protest activity of these women was indictable as extortion, for none of these women ever *obtained the property* of those against whom they demonstrated. Just as acts of official violence against women did not end the struggle for women's suffrage, moreover, the contortion of the crime of extortion in this RICO action will not end the movement to surround unborn life with dignity. In both instances the violence by the government against peaceful protesters and the contortion of the racketeering law are unjustified.

As the court of appeals noted in the first phase of this litigation, women played a leading role in the temperance movement. *National Organization for Women v. Scheidler*, 968 F.2d 612, 620 (7th Cir. 1992). The acts of the three named petitioners complained of in this case pale in comparison to the militant tactics employed by famous nineteenth century feminists who led the temperance movement. In both settings the result was a loss of business opportunities by those against whom the activists protested. But the tactics of contemporary abortion protesters such as the petitioners are mild by comparison to protesters like Carry Nation, who applied constant moral pressure on owners of saloons to discontinue their sale of alcohol, and who were willing to disrupt their business by charging into saloons and destroying kegs of whiskey and beer with an ax. *See, e.g.*, Jack Clocker, *"Give to the Winds Thy Fears": The Women's Temperance Crusade, 1873-1874* 50, 76-77, 197 (1985) (describing violence against protesters); Joseph Gasfield, *Symbolic Crusade: Status Politics & the American Temperance Movement* (2d ed. 1986); Mother Stewart, *Memories of the Crusade, A Thrilling Account of the Great Uprising of the Women of Ohio in 1873, Against the Liquor Crime* (1972). Perhaps these protesters could have been prosecuted for destruction of property, but surely not for extortion. Precisely because they condemned the consumption of alcohol, they never obtained possession of the whiskey they rendered impotable.

The demonstrations and sit-ins occurring during the period while the ratification of the Equal Rights Amendment was being debated are reminiscent of those during the Civil Rights Movement. The golden rule suggests that the standards of tolerance applied to the respondents in the 1970s should also apply to the petitioners in the era of contestation over abortion. Equal justice under law requires the same result.

The abolitionists and those engaged in the modern Civil Rights Movement sometimes engaged in civil disobedience to help raise the awareness of the nation that the rule of law that countenanced slavery and then apartheid was intolerable. The feminists of the nineteenth century and those engaged in the modern movement for gender equality also engaged in civil disobedience from time to time to bear witness to the injustice of rules of law imposed upon women without their consent by all-male legislatures in which they had neither voice nor vote. If the novel view of extortion espoused by the court of appeals – equating loss of business opportunity with "obtaining property" – had been the law of the land in any of these eras, it would probably have taken much longer to achieve the prohibition of discrimination on the basis of race, color and gender contained in statutes such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

This Court has been especially alert to the fragility of movements protesting against deprivations of liberty and equality. In *New York Times v. Sullivan*, 376 U.S. 264 (1964), the Court protected the assets not only of the country's most powerful newspaper, but also one of the weakest and most vulnerable movements of that era, which would not have survived if its political adversaries had been permitted to use state libel law to impose runaway monetary judgments against it. *See, e.g.*, Anthony Lewis, *Make No Law: The Sullivan Case and the First Amendment* (1991).

The Court should act now with no less solicitude to secure the freedom of expression on controversial matters to all classes of protesters without discrimination on the

basis of the content of their speech or the viewpoint they express. The Court should use this case to reinforce the limits on the use of civil RICO that Congress set in the very act of drawing up this statute. *See* Part III-C below. The unwillingness of Congress to apply RICO to social protest was informed by our nation's history. The court below ignored this history and the "central meaning of the First Amendment": the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." *New York Times v. Sullivan*, 376 U.S., at 270.

III. The draconian remedies of RICO – treble damages, prohibitive injunctions, and attorneys fees – were not intended by Congress to punish unpopular social protesters, whose civil disobedience may be punished adequately through other legal remedies.

A. **The Nationwide Injunction.** The first question presented in the petition for certiorari addresses the injunction issued by the district court. The parties and other amici address the issue of whether Congress intended RICO to confer upon the courts power to grant any injunction sought not by the government, but by private parties against other private parties. Amici do not discuss this issue at length, but simply note the dramatic intrusion upon protected speech manifest in the permanent injunction in this case, which the district court ordered throughout the country for a period of twelve years. Pet. App. 110a. Recognizing "that it is a delicate task to craft an injunction that prohibits illegal conduct when that conduct is closely tied to political protests and other protected activity," Pet. App. 23a, the court of appeals nonetheless sustained this injunction because it found that none of the illegal conduct, including trespassing, is protected by the First Amendment. Pet. App. 24a-25a.

Make the subject of the protests in this record almost any other controversial matter – e.g., animal rights (*see* Tr. 4963, RICO "enterprise" could be "animal rights group

that bars entry to a restaurant that serves veal"), civil rights of gays, euthanasia, death penalty, human cloning, racial discrimination, use of Army personnel to train Latin American police in techniques of torture, or treatment of the homeless – and the stunning breadth (nationwide) and extended duration (twelve years) granted in this case against nonviolent protesters against abortion should ring alarm bells. *See* John Chong Yoo, "Who Measures the Chancellor's Foot?" 84 Calif. L. Rev. 1121 (1996).

If the courts have power to grant injunctions under these circumstances, it surely cannot be on the basis of a hidden preference for one approach to an intense controversy over another. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993). The genius of the Free Speech Clause is that it bans discrimination by the government, including the courts, on the basis of subject matter of the speech or the viewpoint of the speaker. *See, e.g., Police Dept. of the City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

B. **The First Amendment Overtones of the Case.** The Court declined to addressed the third question presented in the petition for certiorari, but the impact of the First Amendment upon RICO is still before the Court in the form of the second question granted, which asks whether the Hobbs Act may fairly be read to criminalize "the activities of political protesters who engage in sit-ins and demonstrations that obstruct the public's access to a business's premises and interfere with the freedom of putative customers to obtain services offered there." As we illustrated above in Part II, sit-ins and demonstrations form a core part of the expressive conduct that the First Amendment protects.

When this protracted litigation was last before this Court, two of the justices noted: "Conduct alleged to amount to Hobbs Act extortion, for example, or one of the other, somewhat elastic RICO predicate acts may turn out to be fully protected First Amendment activity, entitling the defendant to dismissal on that basis." *National Organization for Women v. Scheidler*, 510 U.S. 249, 264

(1994) (Souter, J., concurring, joined by Kennedy, J.), citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). *See also* Craig M. Bradley, "NOW v Scheidler: RICO Meets the First Amendment," 1994 Sup. Ct. Rev. 129, 151-67.

C. **The Misapplication of RICO to Social Protest.** The interpretation of RICO adopted by the court of appeals is not supported by the history surrounding the adoption of this statute. For a discussion of this history, *see* Brian Murray, "Protestors, Extortion, and Coercion," *supra*, 75 Notre Dame L. Rev. 691, at 697-99; and Robert Blakey & Kevin Roddy, "Reflections on Reves," *supra*, 33 Am. Crim. L. Rev. 1345, at 1665-75.

During the legislative process that produced RICO, several of the bill's opponents objected to its breadth, especially the possibility that RICO might be used against political protesters. Senate Bill 1861, a forerunner of the final statute, defined racketeering activity as "any act involving the danger of violence to life, limb or property, indictable under State or Federal law and punishable by imprisonment for more than one year." S. 1861, 91st Cong. §2(a) (1969); *see also* 115 Cong. Rec. 9569 (1969). Several objected to this language. For example, Senators Edward M. Kennedy and Philip A. Hart complained that the bill reached beyond "organized crime." S. Rep. No. 91-617, at 215 (1969). The American Civil Liberties Union also opposed the bill, expressing its concern that social and political protesters might fall within the bill's ambit, subjecting them to its draconian penalties. The ACLU found the breadth of the original definition of racketeering activity "particularly troublesome," citing the anti-war demonstrations at the Pentagon and at Columbia University. Measures Relating to Organized Crime: Hearings on S.30 and Related Measures Before the Subcomm. on Crim. Laws and Proc. of the Senate Comm. on the Judiciary, 91st Cong. 475-76 (1969) (statement of Lawrence Speiser, director of the Washington office of the ACLU). It feared that the first draft of the statute would be used by the Nixon Administration to suppress anti-war dissent. The Department of Justice also objected, arguing that the

definition of "racketeering activity" in the bill was "too broad and would result in a large number of unintended applications." S. Rep. No. 91-617, at 121-22. Deputy Attorney General Richard G. Kleindienst suggested an amendment to narrow the definition to a list of specific offenses "customarily invoked against organized crime." *Id.* at 158.

In response to these misgivings, the Senate Judiciary Committee eliminated the broad language defining "racketeering activity" as "danger of violence to life, limb or property," and replaced it with a list of designated federal and state offenses. The new language was virtually identical to that recommended by the Justice Department. The Senate adopted the revised bill by a vote of seventy-three to one. 116 Cong. Rec. 972 (1970). The House then made minor amendments with which the Senate concurred. *Id.* at 36,296. President Richard M. Nixon signed the bill into law on October 15, 1970.

With the narrowing of "racketeering activity" to specific predicate offenses, no one believed that RICO posed a threat to political protesters. Satisfied that the amended bill incorporated its proposed changes, the Justice Department made no further comment on RICO's breadth or the possibility of unintended application of the statute. Leading Senators and House members also united on the point that the bill was narrowly drafted to avoid treading on civil liberties. Senator John L. McClellan, RICO's chief sponsor, informed his colleagues in the Senate that RICO "offers the first major hope of beginning to eradicate the growing organized criminal influence in legitimate commerce, while *posing no real threat to civil liberties*." 116 Cong. Rec. 18,941 (1970) (emphasis added). Representative Richard H. Poff, who sponsored the bill in the House of Representatives, stated that RICO "*does not violate the civil liberties of those who are not engaged in organized crime*, but who nonetheless are within the incidental reach of provisions primarily intended to affect organized crime." *Id.* at 35,344. Senator Edward Kennedy raised a concern that the original bill might be construed to reach apply to someone like Dr. Benjamin Spock, a

pediatrician convicted for violation of the Selective Service Act after staging sit-ins at armed services recruiting centers, draft-card burnings, and other anti-war demonstrations. *See* 116 Cong. Rec. 845, 845-46 (1970); *see also United States v. Spock*, 416 F.2d 165, 168 n.2 (1st Cir. 1969). After a colloquy with Senator McClellan on the floor of the Senate, both Senator Kennedy and the principal sponsor of RICO agreed that the legislation would not reach political protest.

The application of RICO to the nonviolent actions of the three named petitioners is thus impossible to harmonize with the express and clear declaration of the intent of Congress that this statute should not be used as a blunderbuss to chill the protected speech and expressive conduct of social activists such as the petitioners.

D. **The Federalism Problem and the Danger of Overkill.** It is the function of the judiciary to say what the law is, *Marbury v. Madison*, 5 U.S. 137, 177 (1803), but that does not mean that federal courts have permission to ignore the plain language of a federal statute or the clear intent of Congress to adhere to the views of the several states on the definition of a crime. In framing the Hobbs Act in 1946, Congress drew on and incorporated common law concepts on the law of extortion. According to Congressman Hobbs, "the definitions in this bill are copied from the New York Code substantially." 91 Cong. Rec. 11,900 (1945).

This deference by Congress to the role of the states in defining crimes is in keeping with the Tenth Amendment and is entitled to judicial respect. The major revision of the Hobbs Act effected by the court of appeals in this case not only disregards the clear intent of Congress to confine extortion to "obtaining of property" by the perpetrator. It also ignores the long history of extortion, *see* Part I-C above, and thus denigrates the role of the states in defining the law of crimes and of property.

The court of appeals reflects the assumption that federal courts have broad authority to redefine a federal statute in a manner that sets aside over two centuries of

reflection on extortion by the several states. This Court should not allow lower federal courts to construe federal statutes that are based on state law in a manner that erodes respect for the states in the task of defining crimes. Federal courts should not be allowed to reinvent the definition of extortion in the Hobbs Act as they go along and as they see fit, without any guidance from the legislatures or courts of the several states.

After the verdict below, the plaintiffs-respondents filed a Rule 15(b) motion in the district court, seeking to add a variety of claims arising under state tort law. This sort of expansion of RICO into an omnibus federal statute swallowing up garden-variety state tort claims is precisely what this Court rejected in *Beck v. Prupis*, 529 U.S. 494 (2000) (no cause of action where overt act in furtherance of RICO conspiracy is not an act of racketeering, but an ordinary state tort).

Adequate remedies exist in state law to punish those who employ civil disobedience as a means of challenging the current state of the law. For example, a person who trespasses upon private property is subject to the laws of the several states concerning trespass. And the recently enacted FACE law, 18 U.S.C. §248, provides further protection to owners of abortion clinics. These provisions make it unnecessary to add the draconian remedies of RICO – treble damages, prohibitive injunctions and attorneys fees – to the potent mix that may send a sub-zero blast against social activists on a wide variety of contentious issues in our society.

CONCLUSION

The Court of Appeals should be reversed.

Respectfully submitted,

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APPENDIX A

Statements of Interest of Amici Curiae Communities and Voluntary Associations

As noted in the text of the brief, amici are voluntary associations and individuals who engage in protest on a wide variety of issues. Because the Seamless Garment Network organized the participation of these amici in this brief, it is listed first.

Seamless Garment Network [SGN] is a coalition of groups and individuals committed to non-violence and respect for life. The network promotes the consistent life ethic, focusing on the connections among issues concerning human life, including war, abortion, poverty, racism, the arms race, the death penalty and euthanasia. SGN supports all means of non-violent change including, but not limited to, non-violent direct action, political and legislative action, and direct service to those suffering under these attacks on life. *Carol Crossed* (the former executive director of SGN), *Mary S. Rider* (the current executive director), and *Ruth Enero* (president of the Board of Directors) have frequently engaged in non-violent civil disobedience relating to the issues listed above. All three are married women and mothers of many children. If their political opponents were to use civil RICO against them, the loss of their homes, cars, and other valuable things they own would wreak havoc upon them and their families. Ms. Rider offered a declaration before the district court at the stage when it was considering the issuance of the nationwide injunction against anyone associated with the Pro-Life Abortion Network [PLAN]. This declaration challenged the enormous breadth of the nationwide injunction.

Agape is a community of faith in Franklin, Louisiana, that witnesses for peace and justice through nonviolence. It engages in education of its members and the public, especially on the death penalty, through publishing booklets, brochures, and treatises on how to effect change through raising public awareness and consciousness about issues of justice and peace.

Americans Disabled for Accessible Public Transit [ADAPT] is a national organization, most of whose members have severe disabilities and many of whom have been institutionalized in nursing facilities and other public institutions solely because they have disabilities. ADAPT members include persons with spina bifida, cerebral palsy, muscular dystrophy, spinal cord injuries, multiple sclerosis, quadriplegia, paraplegia, head and brain injuries, polio, amyotrophic lateral sclerosis, as well as many other disabilities. Most of these persons use assistive devices, including motorized and manual wheelchairs, ventilators, and personal assistance services for meeting their personal needs. ADAPT's national mission is to establish the civil rights of all individuals to choose to live in their homes and communities, rather than be forced into nursing homes and other institutional settings. ADAPT has a long history and record of enforcing the civil rights of people with disabilities and was one of the key organizations that participated in the political and legislative process that resulted in the passage in 1990 of the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq. ("ADA"). See *ADAPT v. Skinner*, 867 F.2d 1471, 881 F.2d 1184 (3d Cir. 1989).

Carolina Interfaith Task Force on Central America [CITCA] is a voluntary association of persons who believe in non-violent direct action on issues relating to peace and

justice in Central America. CITCA notes that all citizens of the United States have the right to express their views on controversial matters in a non-violent fashion. This right is jeopardized when the courts of the United States government are to prosecute citizens for exercising rights that are fundamental parts of the Bill of Rights.

Catholic Peace Fellowship [CPF] is a nationwide organization of Catholics committed to peacemaking in the name of Christ. CPF engages in educational projects about peace and nonviolence, and it supports those who stand for peace by virtue of conscience. For example, some of the members of CPF have engaged in non-violent civil disobedience of laws and policies inimical to peace in today's world.

Center for Action and Contemplation is a Christian center forwarding the integration of social action and contemplative prayer. The members of this community regularly engage in transforming society around the issues of poverty, war, and other kinds of violence.

Center for Peace Studies at Georgetown University engages in education about historical figures, like Dr. Martin Luther King, Jr, Mohandas Gandhi, Thomas Merton and their message of how to achieve peace through "creative tension," "disturbing a negative peace," and "consciousness raising."

Citizens United for Alternatives to the Death Penalty [CUADP] is a national organization that works to end the death penalty in the United States through aggressive campaigns of public education and the promotion of tactical grassroots activism. CUADP takes no position on the abortion issue. It does not endorse or support the

stand of these defendants on that issue, nor does it necessarily approve of their tactics or actions. It supports the defendants' appeal to the U.S. Supreme Court strictly as a legal matter, urging the Justices that "peaceable, non-violent direct action" – that is, peaceful civil resistance which "crosses the line" and may involve sit-ins or blocking access that "interfere" with somebody's legal "rights" – should not be held to constitute the federal felony crime of "extortion." Nor should a "pattern" of such "direct action" be condemned as "racketeering."

The Conference of Major Superiors of Men serves the leadership of Catholic orders of over 25,000 vowed religious priests and brothers in the United States. The Justice and Peace Division provides a voice for these communities throughout society in witnessing against capital punishment, war, poverty, and any issue that threatens life. The civil rights of free speech and assembly are crucial to effective action against oppression. These civil rights are threatened by the use of the federal racketeering statute against political and religious dissenters.

Dorothy Day Catholic Worker House [DDCW] in Washington, D.C. is a community founded by Dorothy Day and Peter Maurin to bear witness to the Gospel that identifies service to the hungry, the thirsty, the homeless, and the imprisoned as a way of recognizing the presence of God in categories of human need. The community provides hospitality to homeless families while working to address the root causes of homelessness. Committed to following the teachings of Christ on nonviolence, the community sponsors a weekly vigil for peace at the Pentagon as well as numerous other demonstrations against war and militarism, poverty and abortion. Other communities in the Catholic Worker network signing this brief include: the

Casa Juan Diego (Houston, Texas); the *Day House* (Detroit, Michigan); *Ithaca, New York Catholic Worker*; the *Los Angeles Catholic Worker*; *Mary's House* (Birmingham, Alabama); *St. Francis Catholic Worker Community* (Columbia, Missouri); *St. Francis and Therese Catholic Worker House* (Worcester, Massachusetts); and the *St. Joseph House of Hospitality* (Rochester, New York).

The Staff of the *Eighth Day Center for Justice* is composed of Catholic sisters, priests, and laity who believe that non-violent direct action is the backbone of our democracy and the core of the Christian message. For example, some of the healing actions of Jesus on the Sabbath were viewed as a violation of the Torah. Religiously motivated opposition to unjust laws has a long and admirable history, culminating in the Civil Rights Movement and the Movement for Gender Equality in this country, and in the opposition to the assault upon human life in the Nazi regime.

Embrace a Consistent Ethic participates in ongoing peaceful public witness against all forms of taking human life, including opposition to war, capital punishment, euthanasia, abortion, racism and poverty. The members of this community believe that the *NOW vs. Scheidler* litigation interferes with the ability to carry out group/individual conscientious objection, even those actions which would normally be considered within the limits of free speech.

Every Church a Peace Church [ECPC] is an association of churches that adopt non-violent struggle as their way to pursue justice. For this reason ECPC agrees with the brief filed in this case by the Southern Christian Leadership Conference in the court of appeals that the

power to impose treble damage awards upon the petitioners and to enter a nationwide injunction under RICO represents "clear and present danger to future prospects for the lawful exercise of our liberties, namely, the free exercise of religion, speech, press, or assembly and petition for redress of grievances." ECPC will be neither embarrassed nor deterred if we discover one day that our church members are filling the courts, and even the jails, for the free exercise of their religion in face of this regressive judicial ruling.

The Faith Community of St. Sabina's in Chicago is a Word-based, Bible teaching church that believes in the power of praise and worship – a spiritual hospital where all are welcome and invited to "taste and see the goodness of the Lord." The members of the Faith Community of St. Sabina's believe that the church is called to be the immune system of the world – fighting off the attacks of Satan, by both prayer and peaceable non-violent direct action. Thus St. Sabina's has crusaded against a host of social evils including, among other: crime, drugs, abandoned property, the planned marketing of high-alcohol malt liquor in the African-American community, fare hikes and service cuts by mass transit, "witch-hunt" tactics against Black males by suburban police forces, advertising of alcohol and tobacco products on public transportation, and glorification of acts of physical violence on television, especially on shows such as the Jerry Springer TV program."

Feminists for Life of America [FFLA] was established in 1972. FFLA is a nonsectarian, nonpartisan, grassroots organization that seeks equality for all human beings and champions the needs of women. FFLA opposes all forms of violence including abortion, infanticide, child abuse,

domestic violence, assisted suicide, euthanasia and capital punishment, and the exploitation of women and children, as they are inconsistent with the core feminist principles of justice, nonviolence and nondiscrimination.

Feminists for Life of New York is a pro-woman, pro-life organization that advocates for change for women and their children. Some of its members engage in civil disobedience. In the twelve years since its inception, members have worn costumes of the early suffragists, stationing themselves outside of convention centers and libraries, to call attention to issues such as domestic violence, child abuse, and child welfare rights. Like Susan B. Anthony, they have worn gags on their mouths to protest the silencing of women's voices. They participate in a vigil at the Hall of Justice on every second Friday of the month to protest the death penalty.

Franciscan Office of Justice, Peace, and the Integrity of Creation, Santa Barbara Province, practices outreach, advocacy, and education with and on behalf of the friars and those with whom they minister.

The Fund for Animals, founded in 1967 by author and humanitarian Cleveland Amory, seeks to protect wildlife and domestic animals through both advocacy and animal care. The Fund produces educational materials and provides information and interviews to the media in order to help raise public awareness about animal cruelty. The group also works for passage of animal protection legislation, pursues legal action against those who do not abide by those laws, and provides hands-on care to thousands of animals nationwide. Members of the Fund have also

employed peaceful direct action to help curtail sport hunting and commercial trapping.

Nevada Desert Experience has since 1983 organized non-violent civil disobedience at the U.S. nuclear test site in Mercury, Nevada, where tens of thousands of people – including the actor Martin Sheen – have been arrested for trespass in their public protest against weapons of mass destruction.

Not Dead Yet is a national grassroots organization of people with disabilities formed to oppose legalization of assisted suicide and euthanasia, and to bring a disability-rights perspective to the legal and sociological debate around euthanasia and physician assisted suicide. Formed in 1996 in Illinois, Not Dead Yet has worked to educate, support, coordinate and lead the disability community's effort to stop the "right to die" from becoming a duty to die or a right to kill. Not Dead Yet's amicus brief, filed in the U.S. Supreme Court in the case of *Vacco v. Quill,* 117 S.Ct. 2293 (1997), was among a handful out of over 60 such briefs cited by the Court in its final opinion. Not Dead Yet has given invited testimony before U.S. Congressional committees three times. Members have also engaged in non-violent direct action, such as a rally outside the U.S. Supreme Court in January, 1997, and in civil disobedience for which members, most of whom use wheelchairs, have been arrested on misdemeanor charges, such as trespass for a sit-in at the corporate headquarters of the Hemlock Society, and disturbing the peace for protest actions at a conference of the World Federation of Right To Die Societies.

The Orthodox Peace Fellowship in North America is a community of Eastern Orthodox Christians committed to

witnessing for peace in our world: Eastern Orthodox Christianity has for 2000 years affirmed the Sacredness of human life from conception to death. This, we understand, is the faith of Christ, the apostles, the councils, and the fathers and mothers of the Church. This we must proclaim.

Pax Christi USA is the national Catholic peace movement of 14,000 members who are committed to the gospel imperative of seeking peace through nonviolence. The members of this association promote peace through personal and social transformation. They frequently engage in non-violent protest of policies that undermine peace and justice.

The Peter Maurin Center in Washington, D.C. was established in 1997. In the words of Peter Maurin, the center seeks to contribute to creating a "society where it is easier to be good." The Center does so in three ways: (1) evangelization in the Catholic Worker tradition through operating the Catholic Worker Bookstore; (2) carrying out the works of mercy through operating a furniture and household goods exchange, whereby people who have more than they need give it to the Center, which distributes it to needy people; and (3) organizing for peace and justice through solidarity with the people of Puerto Rico in their effort to de-colonize, and specifically to rid themselves of the Navy at Vieques; and (4) through work for the abolition of the death penalty, specifically focusing on the case of Mumia Abu-Jamal. The Center is concerned with the broad and elastic application of the RICO act to dissent and non-violent protest. The misapplication of the law in this way permits the government to single out and criminalize movements for social change virtually at will. Affording the government power of this nature renders

democratic practices timid and superficial and essentially disempowers the People in the political process. To protect popular, and especially unpopular, political expression, these effects of the RICO law need to be nullified.

Plowshares is a coalition of religious believers who seek to enflesh the words of the prophet Isaiah 2:4, "They shall beat their swords into plowshares, and their spears into pruning hooks. Nation shall not take up sword against nation and neither shall they study war anymore." The founders of this movement, Fr. Daniel Berrigan, S.J., his brother, Philip Berrigan, and Philip's wife, Elizabeth McAlister, were leaders in the opposition to the Vietnam War. From burning draft files to organizing larger civil disobedience actions, they provided the peace movement with a keen focus. Their actions against militarism and the nuclear arms race continue today. Fr. Berrigan offered a declaration before the district court at the stage when it was considering the issuance of the nationwide injunction against anyone associated with the Pro-Life Abortion Network [PLAN]. This declaration addresses the severe impact on non-violent social protest that flows from treating loose associations of antiwar protesters as though they were racketeer-influenced corrupt organizations. The Berrigan brothers and Ms. McAlister join this brief in their individual capacities, as do the following Plowshares Activists: John Dear, S.J., Peter DeMott, Bruce Friedrich, Ellen Grady, Art Laffin, Paul Magno, Anne Montgomery, Patrick O'Neill, and Kathy Boylan Shields. Fr. Dear's writings focus on nonviolence and peacemaking. His book, *Peacemaking Behind Bars*, is an account of his time spent in jail for a 1993 action at Seymour Johnson Air Force Base in Goldsboro, N.C. He has participated in many other actions of non-violent civil disobedience for justice and

peace. All of these activists have spent many years imprisoned for their non-violent protest against war.

Sojourners is a Christian ministry whose mission is to proclaim and practice the biblical call to integrate spiritual renewal and social justice. In response to this call, the members of this community offer a vision for faith in public life by: publishing *Sojourners* magazine, and other resources that address issues of faith, politics, and culture from a biblical perspective; preaching, teaching, organizing, and public witness; nurturing community by people from the various traditions and streams of the church; supporting the work of the Sojourners Neighborhood Center in Washington, D.C.; hosting an annual program of voluntary service for education, ministry, and discipleship. Members of Sojourners seek to be guided in their lives and work by the biblical principles of justice, mercy, and humility.

Vieques Support Committee is an organization that has helped to organize civil disobedience to protest the repeated bombing of Vieques Island in Puerto Rico by the United States Navy.

Voices in the Wilderness is a group that seeks to end the economic sanctions against the people of Iraq. The group sends delegations to Iraq to break the siege and bring desperately needed medical supplies to children and families. It has also sponsored demonstrations against the ongoing sanctions, including week-long fasting outside the headquarters of the United Nations in New York.

Witnesses for Reconciliation was formerly the Committee of Southern Churchmen that was founded in the 1960's to promote the work and vision of Dr. Martin Luther King,

Jr., and to advance his cause of nonviolence. The Committee promoted, participated in, and led marches, sit-ins, boycotts, and the freedom rides. Today it is small but continues to advance the cause of civil and political rights for minorities.

Individuals

David Atwood is the director of the Texas Coalition to Abolish the Death Penalty. This group regularly organizes demonstrations against the death penalty in Texas.

Donald Bauer is a Catholic priest who served as a member of the New York State Labor and Religion Coalition since its inception, and who worked tirelessly for farmworker wage equity and other issues on behalf of the poor. He also was appointed to the Congress on Racial Equality and in both of these capacities used public witness to educate and challenge the public.

Michael Baxter, C.S.C. is a theology professor at the University of Notre Dame, and the national president of the Catholic Peace Fellowship.

Wendell Berry is an author, farmer, English professor, and poet. As a long-time conservationist and small farm advocate, he has written many books deploring the loss of family farms and rural jobs to farm factories. He is the recipient of many awards, including the Lyndhurst Foundation Prize and the Jean Stein Award from the American Academy of Arts and Letters.

Abe Bonowitz is the director of Citizens United for Alternatives to the Death Penalty [CUADP], a national organization that works to end the death penalty in the United States through aggressive campaigns of public

education and the promotion of tactical grassroots activism. On occasion he has engaged in peaceful acts of civil resistance. While CUADP takes no position on the abortion issue, Bonowitz is pro-choice and, therefore, he is in profound disagreement with the petitioners on that issue and deplores the violent tactics that abortion opponents have been known to employ. He does not know these petitioners and has no personal knowledge of their tactics. He is informed, though, that jurors at the trial of this case found petitioners or unidentified persons "associated with" them responsible for four acts or threats against persons or property. He supports this appeal only because, as a legal matter, political protest involving sit-ins or blocking access should not be condemned as "extortion" or "racketeering."

Roy Bourgeois, M.M., is a Maryknoll priest who, after years as a foreign missionary in Central America, founded the School of the Americas Watch [SOAW], a loose coalition of citizens concerned about the widespread abuse of human rights – including torture and murder of religious leaders and labor leaders throughout Central and South America – by foreign military officers who study at the U.S. Army School of the Americas at Ft. Benning, Georgia. Each November – on the anniversary of the assassination of seven Jesuit priests and their domestic workers in San Salvador by graduates of the School of the Americas – SOAW organizes a major demonstration at Ft. Benning against the negative effects of this program upon peace and justice in our hemisphere.

Bernard Broussard is the founder of the *Human Relations Council of Louisiana*, a group that played a leading role in community organization on behalf of the civil rights of African Americans in Louisiana in the mid

1960s. From that time to the present, he continues to challenge through marches, demonstrations, holding prayer meetings on behalf of the oppressed in the South. He is a founder of *Starthrowers*, a human rights organization based in Louisiana.

Will Davis Campbell is a writer, lecturer, and long time supporter of the Civil Rights Movement who helped escort African-American children when they tried to integrate a Little Rock, Arkansas high school back in 1957. A founding member of Dr. King's Southern Christian Leadership Conference, he became the Executive Director of the Committee for Southern Churchmen, which is now known as Witnesses for Reconciliation.

Richard Deats is the editor of *Fellowship Magazine*, the publication of the Fellowship of Reconciliation [FOR], the largest, oldest interfaith peace organization in the United States. Since 1915 FOR has carried on programs and educational projects concerned with domestic and international peace and justice, non-violent alternatives to conflict, and the rights of conscience. FOR promotes nonviolence and has members from many religious and ethnic traditions. It is a part of the International Fellowship of Reconciliation, which has affiliates in over 40 countries. FOR was instrumental, maybe critical, in bringing the Gandhian theory of non-violent activism into play during the Civil Rights Revolution.

Thomas Cornell is the founder of the Catholic Peace Fellowship and an ordained deacon in the Catholic Church. He is the editor of *The Catholic Worker*, a newspaper of national circulation founded by Dorothy Day, and he lives at the Catholic Worker farm in Marlboro, New York.

Stephen Dear is the executive director of People of Faith Against the Death Penalty, a national organization with headquarters in Carrboro, North Carolina.

Jim and Shelley Douglass are co-founders of Mary House, Catholic Workers, in Birmingham, Alabama, peace activists, co-founders of Ground Zero Center for Nonviolent Action, and co-organizers of a national campaign to stop the "White Trains" transporting nuclear weapons across the U.S. and to stop the Trident nuclear submarine and missile system. The Douglasses believe that every non-violent movement in U.S. history could have been squelched by the way in which RICO has been applied in *NOW v. Scheidler*. They believe that the adverse rulings in this case threaten to oppress and deter the organizers of future non-violent campaigns, now unknown, that may someday prove necessary to the very existence of our country and of life on earth. The Douglasses express the hope that the Supreme Court recognizes that to bolster any one party's mental security in a controversy by destroying an opponent's right to dissent can undermine the most basic human freedoms secured by the Constitution.

William and Eugenia Durland are the founders of the Center on Law and Conscience. Their interest in this case is expressed in the form of a question: "Was Martin Luther King, Jr., a racketeer and extortionist?" They also state: "There is a danger that, in the wake of September 11, our constitutional protections will be eradicated in the name of a security state. In this context it is especially important not to allow RICO to be applied to the exercise of conscientious nonviolence."

Mary Anne Flores, *Clare Grady*, and *Jessica Stewart* are members of the Ithaca Peace Community, a group that

expresses concern about social justice issues and facilitates the representation of those who would otherwise remain voiceless and unheard in our society. These three women have engaged in non-violent direct action that has led to their arrest for trespass upon government property. For example, they have served sentences for trespass at the Hancock Airfield in Syracuse, NY, in order to protest the ongoing bombing of the people of Iraq.

Thomas Gumbleton is a Catholic bishop in the Archdiocese of Detroit, Michigan, and a founder of Pax Christi, USA. He was a leading voice urging the United States Conference of Catholic Bishops to issue its statement in 1971 collectively opposing the Vietnam War on the ground that the war could no longer be justified under the principles of the just war tradition. Bishop Gumbleton has worked and visited in poor and war-torn countries in Latin America and the Caribbean and is deeply concerned with human rights violations around the world. He holds a deep belief in the power of nonviolence to effect social change.

Nat Hentoff is a renowned civil libertarian who has served on the national board of directors of the American Civil Liberties Union. He is a nationally syndicated columnist and author.

Lana Jacobs received the Martin Luther King Award from Companions of Shalom for her work with the inner-city in Columbia, MO, where she lives in community with the poor. Ms. Jacobs has been arrested numerous times for non-violent direct actions defending the homeless and hungry. Each month she engages in some form of public protest against military build-up, which in her view robs the poor of what they rightfully deserve.

Kathy Kelly is a co-founder of Voices in the Wilderness, a campaign or movement opposing the economic sanctions imposed upon Iraq. The American Friends Service Committee nominated her last year for the Nobel Peace Prize.

Andy Lipscomb is a member of Witnesses for Reconciliation, a board member of the *Seamless Garment Network*, and a long-time activist for civil rights.

Deborah McEvoy, is a member of *Feminists for Life of America* and of the *Detroit Peace Community*. In her role as a health professional, she supports the needs of women and their children through petitions, public advocacy and demonstrations.

Rachel MacNair, a Quaker, is the founder and director of the *Feminism and Nonviolence Studies Association*. She has been arrested frequently for participation in non-violent direct actions at nuclear weapons facilities and abortion clinics.

Richard McSorley, S.J., is the founder of the *Center for Peace Studies* at Georgetown University, and a long-time activist for causes relating to peace and justice. Fr. McSorley has been a leader in these educational endeavors for over two decades. He regularly organizes students and others to appear publicly at the Pentagon, the White House, and other federal institutions in and around Washington DC, to protest policies that deprive the poor of justice.

Charles Mulholland is a Catholic priest who is a long-time activist for causes relating to peace and justice. He is a member of the *Catholic Worker House* in Garner, North Carolina.

Barry Nakell is an attorney in North Carolina actively engaged in the defense of civil liberties for decades as a member of the *American Civil Liberties Union*, and as a former professor of law at the University of North Carolina at Chapel Hill. Mr. Nakell is of the view that the use of RICO against non-violent activists is a severe infringement on the rights secured in the United States Constitution.

Lillibeth Navarro is a wheelchair-bound disabilities rights leader and activist in Los Angeles, where she works with *Communities Actively Living Independent and Free* [CALIF]. She believes that it is critical for the disabled to be in a public and visible role, which includes being able to bring their message of independence to the street, since their access to other venues is often stifled.

John W. Oliver is the coordinator of the Orthodox Peace Fellowship in North America. He is professor emeritus of history at Malone College.

Gail Phares is a founder of *Witness for Peace* [WFP] a national organization working to affect U.S. policy in Latin America. Ms. Phares is also the founder and director of the Carolina Interfaith Task Force on Central America. She has led many delegations to war-torn areas in Latin America and frequently joins non-violent peace and justice actions at home. The members of WFP believe that organizing for justice – including the right to non-violent protest of official policies of our government – is a fundamental right secured under the Constitution.

Michele Pflaum is the president of The Center for Reflection on the Second Law and a long time environmental activist working with groups such as Earth First!. She was charged with RICO violations in 1993 for actions

she took in a non-violent demonstration in Idaho protesting the actions of the National Forest Service in the largest unroaded area in the lower forty-eight states. Her interest in this case is personal, as she has experienced first hand misuse of the RICO act as a tool of intimidation to squelch her participation in America's long tradition of civil disobedience.

Michael Pfleger is Pastor of the Faith Community of St. Sabina's on Chicago's South Side, a "Pastor, Preacher, Parent, Lecturer, Activist, and 'Errand Boy for Jesus,'" who has mobilized his parish and community in a series of protest crusades, sometimes involving peaceable non-violent direct action, including campaigns against drug paraphernalia (which precipitated statewide legislation), "Standing Up – Talking Back," a social action crusade, an anti-Alcohol & Tobacco Billboard campaign which reduced the number of such billboards from 118 to 40 in the local community, and sting operations to identify vendors selling liquor to minors. On April 27, 1998, citing the verdict in *NOW vs. Scheidler*, the Chicago Sun-Times editorialized that, if RICO weren't curtailed, that statute might even be invoked to deter or punish Fr. Pfleger's and St. Sabina's community-based protest against the trivialization of violence on the Jerry Springer TV show.

Sister Helen Prejean, CSJ, is internationally known for her opposition to the death penalty and her work with both death row inmates and the families of murder victims. She is the founder of Survive, a New Orleans victim's advocacy group, and the author of *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States*, which became both a national and international bestseller and a major motion picture. Sister

Helen does not believe that peaceful, non-violent protesters should be condemned as "extortionists" or protest leaders prosecuted as "racketeers."

Scott and Claire Schaeffer-Duffy are co-founders of the Saints Francis and Therese Catholic Worker in Worcester, MA, a lay Catholic pacifist community which offers hospitality to homeless men and women. They also publish the *Catholic Radical*, a bi-monthly journal of opinion. Scott has engaged in civil disobedience at weapons facilities and abortion clinics, and has lectured extensively at colleges and universities throughout New England on the value of non-violent direct action. The Schaeffer-Duffys state their interest in this case as follows: "Non-violent civil disobedience is an American tradition, one that has brought much good to our country. We advocate its use when laws contradict the needs of the common good and the greater law of God's love for all." The Saints Francis and Therese Catholic Worker is a member of the Seamless Garment Network.

Martin Sheen is an actor who has participated for nearly two decades in protests against weapons of mass destruction and in demonstrations pertaining to homelessness and other issues of social justice.

John Stoner is a member of Mennonite Central Committee, a traditional peace church. He is the founder of *Every Church a Peace Church*, a movement to share the convictions of the Anabaptist community with all other Christian churches.

Andrew L. Sullivan served as the Chair of the Libertarian Party of Nebraska from 1999 to 2001. His interest in this case is that law must hold the greatest punishment for violent acts and must distinguish between violent and

non-violent acts. The misapplication of RICO to non-violent civil protest levels out the distinction between violence and nonviolence creating a waterfall turn from dissent to violent action. Without non-violent action, people will passively accept government oppression no matter how severe, or be propelled directly into violent action, for the penalty for actions of nonviolence would become essentially the same as violent actions.

Brian Terrell is a leader of the Catholic Peace Ministry in Des Moines, Iowa and is a participant with members of the Des Moines Catholic Worker community in non-violent Gandhian activism at Offutt Airforce Base.

Howard Zinn is a professor of history at Boston University. He has served as a professor of history at Spelman College in Atlanta, and as a visiting professor at the University of Paris and the University of Bologna. He has written over a dozen books which deal in some way with protest movements in American history. Two of these books most closely related to the theme of this brief are *Disobedience and Democracy* (1968), and *A People's History of the United States* (3d ed. 1999).

Stephen Zunes is a Professor of Political Science at the University of San Francisco. He is the principal editor of *Non-violent Social Movements* (Blackwell, 1999). His research interests have included the impact of grassroots political movements on policy and government. Prior to his academic career, he engaged in non-violent civil disobedience campaigns against nuclear power, nuclear weapons and apartheid and served as a staff member and nonviolence trainer for organizations supporting non-violent civil disobedience.